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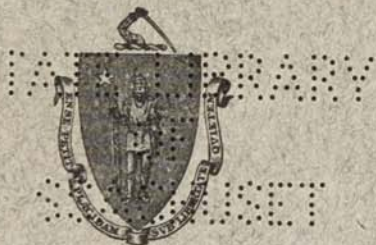
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TWENTY-FIRST ANNUAL REPORT

OF THE

BOARD OF REGISTRATION
IN MEDICINE.

FOR THE YEAR ENDING DECEMBER 31, 1914.



BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
32 DERNE STREET.
1915.

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penditures of the Board amount to \$123,432.40. In dollars and cents, therefore, the Commonwealth has received \$8,699.16 in excess of the total amount appropriated for the support of the Board.

For the year ending Nov. 30, 1915, the Board recommends an appropriation of \$4,300 for salaries, \$575 for incidental expenses of the Board, \$1,000 for clerical service, and \$1,710 for printing, postage, office supplies and contingent expenses, including printing of the annual report. A larger appropriation for incidental expenses is required this year on account of maintaining an office outside of the State House, made necessary during the work on the additional wings.

The number of persons applying for registration this year is 300, all of whom have been examined except 8. Of the number applying 246 are graduates from medical schools authorized to confer degrees in medicine, and 54 nongraduates. The percentage of graduates registered on first examination is 93; of nongraduates, 27.

Of the graduates (238) applying and examined this year, 198 have been registered, 185 by first examination, and 13 by re-examination; 40 are on the rejected list. Of the nongraduates applying and examined this year, 23 have been registered, 18 by first examination, and 5 by re-examination; 31 are on the rejected list.

The percentages acquired in each examination are shown by the following tabulations:—

GRADUATES AND NONGRADUATES.	Examined.	Registered.	Rejected.	Percentage rejected.
March examination,	78	40	38	48
May examination,	45	24	21	46
July examination,	165	117	48	23
September examination,	51	19	32	62
November examination,	67	35	32	47
	406	235	171	45

GRADUATES.	Examined.	Registered.	Rejected.	Percentage rejected.
March examination,	59	34	25	42
May examination,	34	20	14	41
July examination,	130	103	27	20
September examination,	38	19	19	50
November examination,	52	34	18	34
	313	210	103	35

NONGRADUATES.	Examined.	Registered.	Rejected.	Percentage rejected.
March examination,	19	4	15	78
May examination,	11	4	7	63
July examination,	35	14	21	60
September examination,	13	—	13	100
November examination,	15	2	13	86
	93	24	69	77

The following tabulation is based upon the results in the first examination of graduates during the year covered by this report:—

MEDICAL INSTITUTIONS.	Number examined.	Number registered.	Year of Graduation of Rejected Applicants.
Tufts,	67	62	1913-13-13-14-14.
Harvard,	28	27	1914.
Massachusetts College of Osteopathy,	23	5	1907-12-12-12-12-12-13-13-13-14-14-14-14-14-14.
Boston University,	17	17	
Physicians and Surgeons, Boston,	17	4	1907-08-11-11-11-12-13-13-13-13-13-13.
Foreign,	13	8	1890-98-1903-11-13.
University of Vermont,	8	7	1912.
Medical School of Maine,	7	7	
Maryland Medical,	6	2	1912-12-13-13.
Chicago College of Medicine and Surgery,	5	3	1913-13.
Jefferson Medical College,	5	5	
Albany Medical,	5	4	1913.
Dartmouth,	4	4	
Physicians and Surgeons, New York,	4	4	

MEDICAL INSTITUTIONS.	Number examined.	Number registered.	Year of Graduation of Rejected Applicants.
Eastern University,	4	2	1913-13.
Johns Hopkins,	3	3	
Georgetown University,	3	3	
University and Bellevue Hospital,	2	2	
Physicians and Surgeons, Baltimore,	2	2	
University of Maryland,	2	2	
Baltimore University,	2	1	1905.
Medico-Chirurgical, Baltimore,	2	—	1909-09.
University of Iowa,	2	1	1912.
University of Louisville,	2	—	1912-12.
Medico-Chirurgical, Pennsylvania,	2	1	1914.
Bellevue Hospital Medical College,	2	1	1887.
George Washington University,	1	1	
Woman's Medical College, Pennsylvania,	1	1	
Yale,	1	1	
Laval,	1	1	
Fordham University,	1	1	
University of Minnesota,	1	1	
Atlantic Medical School, Baltimore,	1	1	
Baltimore Medical College,	1	1	
College of Medicine and Surgery, Baltimore,	1	1	
Southern Homœopathic, Baltimore,	1	—	1896.
Hospital College, Central University, Kentucky,	1	1	
Jno. A. Creighton Medical College,	1	1	
Hahnemann Medical College, Chicago,	1	1	
Physicians and Surgeons, San Francisco,	1	—	1903.
Temple University, Pennsylvania,	1	1	
University of Michigan,	1	1	
New York University and Bellevue Hospital, New York,	1	—	1913.
Bennett Medical,	1	—	1912.
University of Western Tennessee,	1	—	1913.
University of Kansas,	1	1	

Tabulations showing number of first examinations and average ratings of graduates from medical schools represented by not less than three applicants:—

MEDICAL INSTITUTIONS.	Number examined.	Average Ratings.
Tufts,	67	77.2
Harvard,	28	78.8
Massachusetts College of Osteopathy,	23	70.4
Boston University,	17	78.7
Physicians and Surgeons, Boston,	17	69.8
Foreign,	13	67.1
University of Vermont,	8	76.3
Medical School of Maine,	7	76.7
Maryland Medical,	6	56.8
Chicago College of Medicine and Surgery,	5	74.3
Jefferson Medical College,	5	77.2
Albany Medical,	5	75.3
Dartmouth,	4	78.7
Physicians and Surgeons, New York,	4	80.7
Eastern University,	4	60.1
Johns Hopkins,	3	81.9
Georgetown University,	3	79.6

Applications for registration must be made upon blanks furnished by the Board, and filed with the required fee not later than five days before the date of the examination. On receipt of an application properly executed, a ticket of admission is issued to the applicant, showing his application number and the date and place of the examination. No one is admitted to any examination except by ticket bearing date and place of the examination. Tickets are issued to rejected applicants entitled to a re-examination when applied for not later than Thursday of the week next preceding date of an examination.

Three examinations yearly are provided by law, beginning, respectively, on the second Tuesday in March, July and November. Extra meetings for conducting examinations have been held beginning on the second Tuesday in May and in September, but the question has been raised as to the advisability of holding the September examination in future.

An applicant who files with his application satisfactory evidence that he is a person of good standing in society, and that

he has conducted in another State a reputable practice of fifteen or more years, may, on his written request, be admitted to an examination which will impose no unnecessary hardship on him, and yet conform with the law.

Each applicant must devote three days to each examination. The examinations are conducted in the English language only, and are intended to cover substantially the instruction given in the high-grade medical schools in this country. The subjects on which the examinations are principally conducted are anatomy and histology, physiology and hygiene, pathology and bacteriology, surgery, obstetrics and gynecology, diagnosis and therapeutics, and pediatrics and toxicology. The Board subsequently devotes a sufficient number of days to a consideration of the work done by each applicant, and in doubtful cases carefully reviews all the papers and other evidence submitted.

The law requires that the "examinations shall be wholly or in part in writing." It should be noted that this requirement does not preclude oral examinations in part, nor in part practical work in the laboratory, or other demonstrations of a practical character.

This Board is constantly trying to avoid making its examinations technical, but rather to make them practical and more fully a test of the fitness of an applicant to practice medicine. To this end the co-operation of the medical schools has been secured, and a part of each examination, with the exception of that in July, has been held in some one of the following medical schools in the city, which have been visited in rotation,—Boston University School of Medicine, Tufts Medical College, and Harvard University Medical School. The assistance rendered by these institutions has been most cordial and helpful.

The law under which this Board is acting has been known to be very defective. It was, in the beginning, a compromise measure, and dealing as it does with some who do not wish to be law-abiding, or who have not the ability or ambition to become well-qualified practitioners of medicine, it has been subjected to unceasing opposition and even bitter attack.

It has been repeatedly demonstrated that the Legislature has failed to appreciate the great benefit of a good medical practice act, and hence efforts to improve our law have not met with

the indorsement of the General Court. It has been difficult to bring our lawmakers to realize that proper regulation of the practice of medicine is in the interest of the people and not for the benefit of the medical profession, therefore opposition to recommendations for valuable amendments has led to the rejection of many bills designed to correct the imperfections in our law.

The courts have often been confused because the law does not define the word "medicine," and there should be a legal definition of this word so that one may easily know what constitutes the practice of medicine. Another important defect is the omission of definite educational qualifications preliminary to the acceptance of applications for registration.

Massachusetts has stood still and witnessed the progress of nearly all the States in the Union in requiring, in the various medical practice acts, specific attainments on the part of candidates for licensure. All but three States of the Union demand a degree in medicine as a prerequisite to examination, and Massachusetts has the unenviable distinction of allowing any one to take her examination if of good moral character, twenty-one years of age, and willing to pay the fee of twenty dollars.

The State does not appropriate money enough to conduct examinations which are satisfactory to the Board. It is, however, doing all that can be done, with the means provided, to determine the qualifications of those who apply for registration.

The demand for registration on the part of imperfectly prepared applicants has led to the creation of courses of teaching by irresponsible people, which are designed to enable applicants to pass State Boards, but such instruction does not equip them to meet the exigencies of practice. This preparation to practice is really the work of the medical schools and allied teaching hospitals, and the law should be amended so that every applicant should be required to show that he has received the degree of doctor of medicine, or its equivalent, from a legally chartered medical school having the power to confer degrees in medicine and considered reputable by the Board.

Many students of this problem are convinced that this corrective change should be made. The Board, therefore, recommends the passage of an amendment as follows: —

Section three of chapter seventy-six of the Revised Laws is hereby amended by striking out all after the word "applicants", in the third line, down to and including the word "secretary", in the tenth line, and inserting in place thereof the words:— Applicants for registration under this act, who shall furnish the Board with satisfactory proof that they are twenty-one years of age or over, and of good moral character, and that they have received the degree of doctor of medicine, or its equivalent, from a legally chartered medical school having the power to confer degrees in medicine, shall, upon the payment of a fee of twenty dollars, be examined, and, if found qualified by four or more members, shall be registered as qualified physicians, and shall be entitled to certificates thereof signed by the chairman and secretary.

Much time has been devoted to the investigation of the work of unregistered practitioners, and when it has been possible to secure evidence of sufficient value to warrant court proceedings, such evidence has been submitted to the proper prosecuting officers.

In most cases (about thirty) conviction has followed trial, and the offenders have either paid the fine imposed, or further trial is pending on appeal.

There have been several prosecutions for criminal abortions brought through the efforts of police officers, which have not been directly instigated by this Board, and in most cases convictions have been secured and a State Prison sentence has been imposed. There being no provision in the law for the courts to report convictions to this Board, we have no means of determining the definite number.

A considerable number of persons have been found who were practicing under the designation of "chiropractic." This is a system of alleged cure which, according to its adherents, consists of making adjustments of the vertebræ, the claims of these practitioners being that many of the diseases of the human body result from subluxation of the vertebræ, causing pressure on nerve trunks, and consequent disturbance of functions of various parts of the body.

In justification of the practice of the unregistered chiropractic, the claim has been made that in place of a diagnosis, the chiropractic analyzes, and in place of treatment, he adjusts, and further that he uses no drugs, and hence does not

practice medicine. The courts have, however, ruled otherwise, and have convicted eight of these practitioners.

Hearings have been given to one man convicted of having performed an abortion, and to one for illegal use of the mails. The registration was revoked in each case.

It is to be inferred from information received from many sources that there are a large number of adroit, unscrupulous practitioners in the State, some of whom appear to be doing a lucrative business. In order to secure evidence against these people the Board should have the services of an experienced and astute official who understands the value of evidence and the methods by which it can be secured.

The State will never be purged from the nefarious practice of vicious and incompetent so-called doctors until this department is given authority to employ skillful investigators. Local police departments do not, in many instances, seem actively interested in suppressing this evil, and in some cases will not act until the evidence is presented by this Board or by public-spirited citizens.

No form of fraud is so objectionable as the deception practiced by the dishonest, so-called doctor, for he plays on the fear and credulity of the unfortunate sick, who are easily led to pay for medicine and service which are oftentimes worse than useless.

The State should protect its citizens from fraudulent practitioners just as much as it tries to prevent suffering and fraud in other ways. An expert investigator would not only rid the State of these empirics, but would in the end secure, in fines paid, more than the cost of his services.

A common disregard of the law is found in the practice of midwives. These persons thrive partly because the customs of other countries are continued by the immigrants here, and partly because organized efforts have not been made to provide a service better than that given by the midwives and yet no more expensive.

Confusion has arisen by reason of the provisions in chapter 280 of the Acts of 1912, requiring midwives to report births, and also authorizing the payment of 25 cents for each report.

When prosecuted, the defence has claimed that this act legalizes the midwife, but the courts have ruled otherwise, and conviction has followed in nearly every case which has been prosecuted. At the instigation of the Board, ten midwives have been prosecuted and convicted.

These people are not competent to practice this branch of medicine, and should be eliminated, but it is futile to attempt a wholesale crusade until a substitute has been provided. This is being done in a limited way in parts of Boston, and in Lawrence and New Bedford, but it is only a small beginning, and this reform must be worked out by social service workers in conjunction with the medical profession.

There are now, in accordance with the reports of the boards of health in Massachusetts, 490 midwives, and several more suspected, but unless some midwife has been known to have done some harmful thing, or to have been unsatisfactory to her patrons, little has been done to abolish her practice. Boards of health and police departments do not spontaneously complain of her, and, in the great majority of cases, she is not interfered with.

The Appendix contains the laws relative to registration, court opinions, and a list of the names of physicians registered this year.

Respectfully submitted,

SAMUEL H. CALDERWOOD, *Chairman.*

WALTER P. BOWERS, *Secretary.*

AUGUSTUS L. CHASE.

CHARLES H. COOK.

MATTHEW T. MAYES.

NATHANIEL R. PERKINS.

GEORGE L. RICHARDS.

APPENDIX.

LAWS AND DECISIONS.

LAW RELATING TO THE REGISTRATION OF PHYSICIANS.

[REVISED LAWS, CHAPTER 76, SECTIONS 1-9.]

SECTION 1. There shall be a board of registration in medicine consisting of seven persons, residents of this commonwealth, who shall be graduates of a legally chartered medical college or university having the power to confer degrees in medicine, and who shall have been for ten years actively employed in the practice of their profession. No member of said board shall belong to the faculty of any medical college or university, and no more than three members thereof shall at one time be members of any one chartered state medical society. One member thereof shall annually in June be appointed by the governor, with the advice and consent of the council, for a term of seven years from the first day of July following.

SECTION 2. Said board shall hold regular meetings on the second Tuesday of March, July and November in each year, and additional meetings at such times and places as it may determine. At the regular meeting in July, it shall organize by the choice of a chairman and secretary who shall hold their offices for the term of one year. The secretary shall give a bond to the treasurer and receiver general in the penal sum of five thousand dollars, with sufficient sureties to be approved by the governor and council, for the faithful performance of his official duties.

SECTION 3. Applications for registration shall be made upon blanks to be furnished by the board, and shall be signed and sworn to by the applicants. Each applicant for registration shall furnish satisfactory proof that he is twenty-one years of age or over and of good moral character and, upon payment of a fee of twenty dollars, shall be examined by said board. If he is found by four or more members thereof to be twenty-one years of age or over, of good moral character and qualified, he shall be registered as a qualified physician and shall receive a certificate thereof signed by the chairman and secretary. An applicant who fails to pass an examination satisfactory to the

board, and is therefore refused registration, shall be entitled within one year after such refusal to a re-examination at a meeting of the board called for the examination of applicants, without the payment of an additional fee; but two such re-examinations shall exhaust his privilege under his original application. Said board, after hearing, may by unanimous vote revoke any certificate issued by it and cancel the registration of any physician who has been convicted of a felony or of any crime in the practice of his profession. All fees received by the board shall, once in each month, be paid by its secretary into the treasury of the commonwealth.

[SECTION 4.¹ Each member of the board shall receive ten dollars for every day actually spent in the performance of his duties, and the necessary travelling expenses actually expended in attending the meetings of the board, not exceeding three cents a mile each way. Such compensation and the incidental and travelling expenses shall be approved by the board and paid by the commonwealth only from the fees paid over by the board.]

SECTION 5. The board shall keep a record of the names of all persons registered hereunder, and of all money received and disbursed by it, and a duplicate thereof shall be open to inspection in the office of the secretary of the commonwealth. Said board shall annually, on or before the first day of January, make a report to the governor of the condition of medicine and surgery in this commonwealth, of all its official acts during the preceding year and of its receipts and disbursements.

SECTION 6. The board shall investigate all complaints of the violation of the provisions of section eight, and report the same to the proper prosecuting officers.

SECTION 7. Examinations shall be wholly or in part in writing in the English language, and shall be of a scientific and practical character. They shall include the subjects of anatomy, surgery, physiology, pathology, obstetrics, gynecology, practice of medicine and hygiene, and shall be sufficiently thorough to test the applicant's fitness to practise medicine.

SECTION 8. Whoever, not being lawfully authorized to practise medicine within this commonwealth and registered as aforesaid, holds himself out as a practitioner of medicine, or practises or attempts to practise medicine in any of its branches, or whoever practises medicine or surgery under a false or assumed

¹ Repealed by the Acts of 1902, and fixed salaries established.

name, or under a name other than that by which he is registered, or whoever personates another practitioner of a like or different name, shall, for each offence, be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for three months, or by both such fine and imprisonment. In a case in which a provision of this or the preceding section has been violated, the person who committed the violation shall not recover compensation for services rendered.

SECTION 9. The provisions of the eight preceding sections shall not be held to discriminate against any particular school or system of medicine, to prohibit medical or surgical service in a case of emergency, or to prohibit the domestic administration of family remedies. They shall not apply to a commissioned medical officer of the United States army, navy or marine hospital service in the performance of his official duty; to a physician or surgeon from another state who is a legal practitioner in the state in which he resides, when in actual consultation with a legal practitioner of this commonwealth; to a physician or surgeon residing in another state and legally qualified to practise therein, whose general practice extends into the border towns of this commonwealth, if such physician does not open an office or designate a place in such towns where he may meet patients or receive calls; to a physician authorized to practise medicine in another state, when he is called as the family physician to attend a person temporarily abiding in this commonwealth; nor to registered pharmacists in prescribing gratuitously, [osteopaths,¹] pharmacists, clairvoyants, or persons practising hypnotism, magnetic healing, mind cure, massage, Christian science or cosmopathic method of healing, if they do not violate any of the provisions of section eight.

LAW RELATIVE TO THE PRACTICE OF OSTEOPATHY.

[CHAPTER 526, ACTS OF 1909.]

SECTION 1. Any person who was actively engaged in the practice of osteopathy in this commonwealth prior to the first day of January, nineteen hundred and nine, and who shall present to the board of registration in medicine satisfactory evidence that he is twenty-one years of age and of good moral character, and that he is a graduate in good standing of, and holds a diploma from, a

¹ Repealed by chapter 526, Acts of 1909.

regularly conducted school or college of osteopathy within the United States, which at the time of his graduation required a course of study of twenty months or longer, including the subjects of anatomy, physiology, pathology, hygiene, chemistry, gynecology, diagnosis and theory and the practice of osteopathy, with an actual attendance of not less than twenty months, or who has practiced osteopathy in this commonwealth for the four years prior to the passage of this act, which facts shall be set forth in an affidavit, shall upon application on a blank furnished by said board, signed and sworn to by the applicant, and upon payment of a fee of ten dollars, be registered as an osteopath, and a certificate in testimony thereof shall be given to him, signed by the chairman and secretary of said board: *provided*, that such application shall be made on or before the thirtieth day of September, nineteen hundred and nine, after which date all action under this section shall cease.

SECTION 2. Any person who is twenty-one years of age and of good moral character, and who shall have been actually engaged in the practice of osteopathy in this commonwealth prior to the first day of January, nineteen hundred and nine, may, upon the payment of a fee of ten dollars, make application to said board to be examined in the subjects named in section one: *provided*, that such application is made on or before September thirtieth, nineteen hundred and nine. If, upon such examination by said board, the applicant shall be found qualified, he shall be registered as an osteopath and shall be entitled to the certificate provided for in section one. An applicant who fails to pass an examination satisfactory to said board, and who is therefore refused registration, shall be entitled, within six months after such refusal, to a re-examination without the payment of an additional fee.

SECTION 3. Persons registered hereunder shall not be permitted to prescribe or administer drugs for internal use, or to perform major operations in surgery, or to engage in the practice of obstetrics, or to hold themselves out, by virtue of such registration, as and for other than osteopaths.

SECTION 4. Any person registered under this act who shall violate any provision of the preceding section shall be subject to the penalties imposed upon unlicensed practitioners by section eight of chapter seventy-six of the Revised Laws.

SECTION 5. The terms "osteopathy" and "osteopathic", as used in this act or in relation to the registration and practice of osteopathic physicians, shall have the same legal construction and

meaning as the terms "medicine" and "medical" as used in chapter seventy-six of the Revised Laws and in acts in amendment thereof, where such construction and meaning shall not be inconsistent with the provisions of section three of this act.

SECTION 6. Section nine of chapter seventy-six of the Revised Laws is hereby amended by striking out the word "osteop-athists", in the eighteenth line.

SECTION 7. This act shall take effect upon its passage.

LAW RELATIVE TO THE REINSTATEMENT OF PHYSICIANS BY THE
BOARD OF REGISTRATION IN MEDICINE.

[CHAPTER 346, ACTS OF 1913.]

SECTION 1. Section three of chapter seventy-six of the Revised Laws is hereby amended by inserting after the word "profession", in the nineteenth line, the following: — The board may subsequently, but not earlier than one year thereafter, by a unanimous vote, reissue any certificate formerly issued by it or issue a new certificate, and register anew any physician whose certificate was revoked and whose registration was cancelled by the board, — so as to read as follows: — *Section 3.* Applications for registration shall be made upon blanks to be furnished by the board, and shall be signed and sworn to by the applicants. Each applicant for registration shall furnish satisfactory proof that he is twenty-one years of age or over and of good moral character and, upon payment of a fee of twenty dollars, shall be examined by said board. If he is found by four or more members thereof to be twenty-one years of age or over, and of good moral character and qualified, he shall be registered as a qualified physician and shall receive a certificate thereof signed by the chairman and secretary. An applicant who fails to pass an examination satisfactory to the board, and is therefore refused registration, shall be entitled within one year after such refusal to a re-examination at a meeting of the board called for the examination of applicants, without the payment of an additional fee; but two such re-examinations shall exhaust his privilege under his original application. Said board, after hearing, may by unanimous vote revoke any certificate issued by it and cancel the registration of any physician who has been convicted of a felony or of any crime in the practice of his profession. The board may subsequently, but not earlier than one year thereafter, by a unanimous vote, reissue any

certificate, and register anew any physician whose certificate was revoked and whose registration was cancelled by the board. All fees received by the board shall, once in each month, be paid by its secretary into the treasury of the commonwealth.

SECTION 2. This act shall take effect upon its passage.

COMMONWEALTH v. ST. PIERRE.

This is a case in which a person in Fall River was accused of practicing medicine without registration. His professional sign was that of an "eye specialist." He was sentenced in the municipal court to three months' imprisonment and to pay a fine of five hundred dollars, the maximum penalty. The case was carried to the superior court, where sentence was sustained; but certain exceptions were taken by the defendant's counsel to the rulings of the court. The exceptions were finally disposed of in the following opinion of the supreme judicial court, rendered on the thirteenth day of December, 1899:—

LORING, J. The exception to the exclusion of testimony offered by the defendant on cross-examination must be sustained. The government had introduced in evidence testimony of a number of persons to the effect that they had visited the defendant at various times; that he gave to them medicines, and advised them how to use them; that at these times they had conversations with him about the nature of their complaints; that he afterwards visited some of them at their houses and treated them there, and that they paid him money; and the bottles and packages, which the witnesses testified were given to them, had been put in evidence.

The defendant offered to prove that "each and every occasion at the time the parties were told by the defendant that he was not a doctor, and that he did not charge anything for his services." This evidence was excluded.

If the defendant sold the medicines, receiving payment therefor, and gave advice gratuitously as to the use to be made of them, he was not, so far as those instances were concerned, holding himself out as a physician; his declarations accompanying the acts and showing the character of them were admissible as part of the *res gestæ*.

Of course it was open to the government to contend that in these instances he was really acting as a physician, and was paid as such for his services, and that these statements were efforts to evade the statutory provisions here in question.

But when the Commonwealth put in testimony to the effect that he had given directions and advice as to the use of the contents of the packages and bottles sold by him, and had been paid by the persons to whom

the contents were sold, it was the right of the defendant to prove that in each instance he was paid not for the advice but only for the drugs, and that he declared that he was not a physician; and in that way to raise the question whether, so far as these instances were concerned, he was selling drugs and giving information gratuitously as to their use, and therefore not thereby holding himself out as a physician, or whether he was really acting as a physician, taking payment therefor, and was seeking by such declarations to evade the effect of his actions. This question was a question for the jury, under all circumstances, and the testimony offered should have been admitted.

As the questions involved in the other exceptions may arise in a new trial, they may be briefly disposed of here:—

2. The burden was on the defendant to show that he was a registered physician, if he relied on such a justification. (Pub. Sts., c. 214, § 12.) This applies to cases where the absence of a license is made part of a description of the offence). . . Commonwealth v. Barnes, 138 Mass. 511; . . .)

3. Proof that the defendant acted either as a physician or surgeon was sufficient to support the complaint, which charged him with holding himself out as a physician and surgeon. There is but one offence, and that may be committed by the defendant's holding himself out as a physician or a surgeon; if the complaint charges that the offence is committed by the defendant's holding himself out both as a physician and surgeon, the whole offence is proved if he is shown to have held himself out as either.

4. The ruling that, if the defendant held himself out as an eye specialist, he held himself out as "one who devoted himself to a branch of the healing art which is the profession of the physician and surgeon," and that "if the defendant held himself out as an eye specialist, he held himself out as a physician and surgeon within the meaning of the statute," was correct.

New trial ordered.

COMMONWEALTH v. EVA H. DELON.

The following is a decision of the Supreme Judicial Court:—

LORING, J. The defendant was convicted of practicing medicine in violation of Revised Laws, chapter 76, section 8. Her defence was that what she did was done by her as a clairvoyant within the last clause of Revised Laws, chapter 76, section 9.

The Commonwealth introduced evidence that two men called on her for treatment; that while asleep, holding the patients' hands, she gave advice to the first, and told the second the nature of his sickness; and that in both cases she furnished the patients with medicine for which she was

paid. The defendant took the stand in her own behalf and testified that she was not learned in diseases or in medicine; that when consulted by a patient she went into a trance and that while in the trance she was told by "occult force" what the matter with the patient was and what remedy to prescribe; and on coming out of the trance she prescribed what had been revealed to her while she was in it.

The judge instructed the jury "that although she (the defendant) be a clairvoyant, in her line of practice, she is not within the exception specified in the statute if, for the cure, prevention or alleviation of any pain, disease or sickness of those seeking treatment from the defendant, she prescribed or directed any drug or medicine, with the expectation of receiving compensation therefor." To this exception was taken.

Possibly the word clairvoyant might be interpreted to include one who hears communications made by "occult force" while in a trance. But in the accurate and indeed in the ordinary meaning of the word it is confined to a person who sees, while in a trance, things which by reason of distance or for other reasons are not ordinarily visible.

We are of opinion that section 9, of chapter 76 of Revised Laws, in creating exceptions to the general rule established by section 8 of that act, is to be construed strictly. It follows that the word clairvoyant must be construed accurately. So construed, it does not authorize a defendant to prescribe medicines revealed to his hearing by "occult force" while in a trance. The instruction given was right and the entry must be

Exceptions overruled.

COMMONWEALTH *v.* MADDALINA DELLA-RUSSO.

The complaint against Della-Russo, a midwife, was that she held herself out as a practitioner of medicine; and that she practiced medicine unlawfully. In the lower court, Suffolk County, William J. Forsaith, justice, she was adjudged guilty on both counts. An appeal was taken and the case was tried in the superior court, December term, 1904. Verdict, guilty on both counts. The contention of the defendant's counsel was that in holding herself out as a midwife she did not hold herself out as a practitioner of medicine, and that in her practice she attended only normal cases of labor, and in so doing she acted in the capacity of a nurse only.

Robert O. Harris, justice, charged the jury as follows:—

In the consideration of this case, it is well for the jury in the beginning to start upon their deliberations with a well-defined idea of what the issue is. This complaint charges the defendant in two counts; first, with holding herself out as a practitioner of medicine; second, as hav-

ing practiced medicine. The statute under which we are proceeding provides that, "Whoever, not being lawfully authorized to practise medicine within this commonwealth and registered as aforesaid, holds himself out as a practitioner of medicine, or practises or attempts to practise medicine in any of its branches," shall be subject to a certain penalty. This statute, enacted in 1894, may be said to be a re-enactment, in a little different shape and with wider scope, of laws which have been on the statute books of this commonwealth for many years. Under the old law there arose the question which has been raised in this case, as to whether it is necessary that a person should hold himself out to practice medicine generally in order to come within the purport of the statute. Under the early statute, in 1835, Chief Justice Shaw of the supreme court rendered an opinion as follows:—

The first question for the court is whether, upon the facts agreed, the defendant can be held to be engaged in the practice of physic or surgery. It appears that he professes and practices bone setting and reducing sprains, swellings and contractions of the sinews, by friction and fomentations; but no other department of the curing art. By bone setting we understand the relief afforded as well in cases of dislocation as in those of fracture. The court are of the opinion that this brings him within the meaning of the statute as one who practices physic or surgery. We think it not necessary for one to profess to practice generally, either as a physician or surgeon, to bring him within the operation of this statute, but that it extends to any one engaging in practice in a distinct department of either profession, and that the defendant's practice forms a considerable department in the practice of surgery.¹

That is to say, if one holds himself out to practice or practices in any line of endeavor which comes within the territory which belongs to medicine, he comes under this act, although he may follow a specialty.

But this precise question as to whether midwifery is included within the statute has been directly decided in another Commonwealth, under a statute very similar in terms to ours. The case was a complaint against a woman for practicing midwifery. The supreme court of that State said:—

It appeared from the proof that the defendant held herself out as a midwife and practiced in that capacity. It is urged this is not a violation of the act. We think very clearly it is. Midwifery is an important department of medicine, and is so recognized by the act. The law-making power of the State has enacted that "No person shall practise medicine in any of its departments in this State without the qualifications required by this act." The validity of such a law is not denied, but it is urged only that the defendant had not practiced medicine within the meaning of the act. It needs no argument to show the importance of obstetrics as a department of medicine, nor the necessity that those who assume to practice in that department should possess due knowledge and skill. The welfare of their patients is certainly within the purview of the law, no less than in other departments, where, in many instances, at least, even less care and skill may be essential, and where the consequence of ignorance and unskillfulness may be less unfortunate.²

¹ Hewitt v. Charrier, 16 Pickering, 353.

² People v. Argndt, 60 Ill. App. 89.

Under the rulings in these cases to which I have referred, and under the law as I understand it, I shall have to instruct you that as a matter of law one who undertakes to practice midwifery is one who is undertaking to practice medicine. The issue in this case is, therefore, whether this defendant has undertaken to practice as midwife. If so, she is within the language of the act, because she has undertaken to practice medicine, or a branch thereof.

The question, then, in this case narrows itself down to just what this defendant did. She claims that she did not hold herself out to practice in any other way than as a mere nurse; and that she assumed no responsibilities in anything that she did in any case other than those of an ordinary trained or skilled nurse. And upon that issue you have to consider the evidence in the case. If all she did was to act simply as a nurse, acting under somebody else's directions, and doing only those things which a mere nurse ordinarily does, and assuming no responsibility for anything excepting that she should do the things well as a nurse, then she is not guilty under this complaint. If, however, while calling herself a nurse she actually assumed the function of a physician, and advertised herself as being competent to perform the duties of an ordinary physician, and was engaged upon that understanding, then you will be warranted in finding her guilty.

COMMONWEALTH *v.* PORN.

This is a case in which a midwife in Gardner was accused of practicing medicine without registration. In the municipal court she was found guilty and sentenced to pay a fine of one hundred dollars. In the superior court she was also found guilty, but exceptions to the rulings of Judge Aiken, before whom the case was tried, were allowed, which, in October of this year, were heard by the supreme court and overruled. The opinion handed down by Mr. Justice Rugg is as follows:—

This is a complaint charging that the defendant "did practice medicine" and did "hold herself out as a practitioner of medicine" contrary to Revised Laws, chapter 76, section 8.

After the case was first heard by us (see Mass. Reports, vol. 195) the defendant was again tried in the superior court upon an agreed statement of facts, the substance of which was that at the time mentioned in the complaint, and for some years prior, the defendant held herself out as a midwife and practiced midwifery, but did not claim to be a general practitioner of medicine, nor was she lawfully authorized to practice medicine as provided by Revised Laws, chapter 76, section 3. She delivered many women in childbirth for compensation, and carried with her to patients the usual obstetrical instruments, which she used rarely on

occasions of emergency, but never if a physician could be called in time. She used six printed prescriptions or formulas in treating her patients which contained directions for their application, and the purposes for which they were used, as follows: "For vaginal douche," "for post-partum hemorrhage," "to prevent purulent ophthalmia in the new-born," "for after-pains," "for uterine inertia" and "for painful hemorrhoids or piles." She used no other prescriptions or formulas. She was a trained nurse of experience and was a graduate of the Chicago Midwife Institute, from which she received a diploma which stated that she had received theoretical and practical instruction in the art of midwifery for a period of six months, and was declared a graduated midwife. Upon these facts the superior court ruled that the jury would be authorized to find the defendant guilty, and the defendant's first exception relates to this ruling. When the facts are undisputed, it is generally a question of law whether they constitute a violation of the statute. (*Commonwealth v. Porn*, 194 Mass.)

Both medical and popular lexicographers define midwife as a female obstetrician, and midwifery as the practice of obstetrics.

Revised Laws, chapter 76, section 7, mentions obstetrics as one of the subjects of examination for the purpose of testing an applicant's fitness to "practice medicine." This goes far toward showing that obstetrics is a branch of the practice of medicine. It requires no discussion to demonstrate that, when in addition to ordinary assistance in the normal cases of childbirth there is the occasional use of obstetrical instruments, and a habit of prescribing for the conditions described in the printed formulas which the defendant carried, such a course of conduct constitutes the practice of medicine in one of its branches. Although childbirth is not a disease, but a normal function of women, yet the practice of medicine does not appertain exclusively to disease, and obstetrics, as a matter of common knowledge, has long been treated as a highly important branch of the science of medicine. In *Higgins v. McCabe*, 126 Mass., it is intimated that treatment of eyes of the infant (for which one of the prescriptions of the defendant was employed) is not within the duties of midwifery. In view of all the agreed facts, there was no error in submitting the case to the jury.

The defendant also offered expert evidence to prove that the practice of the defendant, as shown in the agreed facts, was not the practice of medicine in any of its branches, and that the conduct of the defendant was not holding herself out as a practitioner of medicine. This offer of evidence was excluded, against the objection and exception of the defendant.

The former decision of this case said that expert medical evidence was admissible to prove "what a midwife does or is expected to do as such, so that the court may see whether her acts or any of them are regarded as the practice of medicine in any of its branches. . . . Whether upon such evidence it would appear that the ministrations of a midwife are

those of a physician, or rather of an attendant nurse and helper, would ordinarily be a question of fact, or, if the facts were not in dispute, a question of law." (194 Mass.) At the present trial the facts were agreed. All that the defendant sought to show was that these facts in the opinion of experts did not constitute the practice of medicine. But as the facts were not in dispute, within the former decision, the question was not one for expert evidence but for the court. Moreover, on all the facts shown as to the use of prescriptions and the pains they were stated to alleviate, and the use of obstetrical instruments, as well as attendance and service at childbirth by the defendant, it would be contrary to the plain intent of the statute and flying in the face of the common use of words to permit experts to testify that the language employed in the statute did not comprehend the acts confessedly performed by the defendant. We are far from saying that it would not be within the power of the Legislature to separate, by a line of statutory demarcation, the work of the midwife from that of the practitioner of medicine. The statute now under consideration does not make such separation. Whatever hardship there may be upon the defendant, who is a woman of good character and reputation, as shown by the agreed facts, comes from the scope of the statute.

The defendant contends that the statute as thus construed is unconstitutional. Its validity cannot be questioned on this ground. The maintenance of a high standard of professional qualifications for physicians is of vital concern to the public health, and reasonable regulations to this end do not contravene any provision of the State or Federal Constitution.

Exceptions overruled.

COMMONWEALTH *v.* JEWELLE.

This is a case of a proprietor of a so-called sanitarium in Springfield, who was accused of practicing medicine without registration. The defendant was convicted in the municipal court, and again in the superior court held by Judge Crosby. The exceptions to the rulings of the court were disposed of in an opinion of the supreme court, as follows:—

HAMPDEN.

OCT. 19, 1908.

Illegal Practice of Medicine—Revised Laws, Chapter 76, Section 8—Evidence.

Complaint charging a violation of the Revised Laws, chapter 76, section 8, by practicing medicine without being authorized so to do. In the superior court, before Crosby, J., there was a verdict of guilty, and defendant excepted.

S. S. Taft for Commonwealth.

R. J. Talbot for defendant.

KNOWLTON, C.J. — The defendant was convicted under a complaint charging him with a violation of the Revised Laws, chapter 76, section 8, by practicing medicine in this Commonwealth without being lawfully authorized so to do. There was conflicting evidence at the trial in regard to what he had done. To quote from the judge's charge: "The Commonwealth says also that upon different occasions the defendant has prescribed medicines and administered, and advertised that he prescribed as a part of his treatment, what he called 'vitalizer,' and that he has been in the habit of giving what are called electric or ray baths, and that on one or more occasions, in the giving of what was called the stomach wash, another substance than water was in the tumbler, which was taken by the patient." There was also evidence that on different occasions he "did make a diagnosis of the patients, for the purpose of ascertaining what ailed them, and that then he prescribed for them treatment which was afterward administered to them." The defendant did not admit this. In his charge the judge said: "The defendant does not claim that he has any knowledge of drugs or of disease in the ordinary sense in which that word is used. I understand him to testify that he did not understand about diseases, that he did not treat disease, but that he treated the healthy portion of the body."

The defendant asked the court to rule that "There is no law against a person being a mind cure healer, or a massage healer, or an osteopathist; he can practice his healing so long as he did not prescribe or deal out medicine." The defendant excepted to the refusal of the judge to give in terms the last part of this request. He also excepted to the "rulings and refusals to rule."

This rule cannot avail the defendant to open objections to the charge as a whole, or to statements in the charge on matters to which the judges' attention was not called by the defendant. (*Curry v. Porter*, 125 Mass. 94; *Com. v. Meserve*, 154 Mass. 64-65.) Under the decision in *Brick v. Bosworth*, 162 Mass. 334, nothing more than the refusal of the request and the rulings given upon the specific matters to which attention was called by the request is opened by such an exception.

The first part of the request was plainly covered by the judge's charge. As to the last clause of the request, the charge was, in substance, that such a person can practice his healing or treatment in either of these ways so long as he does not go beyond the practice or treatment that is fairly included in such of these methods as he adopts, and practice medicine within the meaning of the Revised Laws, chapter 76, section 8, otherwise than by using one or more of these methods. The defendant's request implied that one could not practice medicine within the meaning of the words in section 8 without prescribing or dealing out medicine, that is, prescribing or dealing out a substance used as a remedy for disease. The judge allowed the jury to find that one might practice medi-

cine within the meaning of the statute, that is, might practice the healing art, or the art or science which relates to the prevention, cure or alleviation of disease, without necessarily prescribing or dealing out a substance to be used as a medicine. In this we think he was right. It would be too narrow a view of the practice of medicine to say that it could not be engaged in in any case or class of cases otherwise than by prescribing or dealing out a substance to be used as a remedy. The science of medicine, that is, the science which relates to the prevention, cure or alleviation of disease, covers a broad field, and is not limited to that department of knowledge which relates to the administration of medicinal substances. It includes a knowledge not only of the functions of the organs of the human body, but also of the diseases to which these organs are subject, and of the laws of health and the modes of living which tend to avert or overcome disease, as well as of the specific methods of treatment that are most effective in promoting cures. It is conceivable that one may practice medicine to some extent, in certain classes of cases, without dealing out or prescribing drugs or other substances to be used as medicines. It is conceivable that one may do it in other ways than those practiced as a part of their respective systems, by either "osteopaths, pharmacists, clairvoyants, or persons practicing hypnotism, magnetic healing, mind cure, massage, Christian science or cosmopathic method of healing."

The purpose of the statute seems to be to permit the practice of these several methods of treatment, including everything that strictly belongs to each, but not to permit the unlicensed practice of medicine otherwise. If a practice of medicine otherwise, without dealing out or prescribing drugs or other substances to be used as medicine, is possible, the rulings and refusals to rule were right. We think such a practice of medicine is possible.

There is nothing in the bill of exceptions, except the statements in the judge's charge to show what the facts were upon which the Commonwealth relied. There were no other requests for instructions as to what would constitute the practice of medicine, and there is nothing to show that more specific instructions were necessary. Much less is there any exception to the failure to instruct more particularly as to what would constitute the practice of medicine.

There is much to indicate that the defendant not only practiced medicine in other ways, but that he dealt out substances to be used as medicines, which did not apply to the practice of osteopathy, mind cure or massage. These exceptions must be overruled.

The defendant also excepted to the refusal of the court to grant his motion to dismiss the complaint, on the ground that the statute is unconstitutional. The question thus raised was decided against the defendant's contention in *Com. v. Porn*, 196 Mass. 326.

Exceptions overruled.

LIST OF PHYSICIANS REGISTERED IN 1914.

Adamian, Hovsep Garo.
Adams, Celia Paine.
Ahern, John Francis.
Albee, Kenneth Field.
Alexander, Kirke Locke.
Allen, Harold Musgrave.
Allison, Carl Edwin.
Amendola, Alfred Alfonso.
Anderson, Victor Vance.
Andrews, Benjamin Franklin.
Arey, Harold Carleton.
Atwood, Blanche Louise.

Bagnall, Elmer Stanley.
Ballou, Harry B.
Barnes, Albert Edmond.
Baxter, Clarence Pennell.
Bennison, Raymond Earl.
Berlin, Maurice George.
Binney, George Hayward.
Biondi, George Carmine.
Brault, Norbert Romulus.
Brewster, David Truman, Jr.
Brick, George Joseph.
Brown, Herbert Rutherford.
Bruce, Jacob Baldwin, Jr.
Bruno, Florestano.
Bundy, Erwin Stillman.
Burnes, Thomas Francis.
Burns, Oscar.
Burpee, Benjamin Prescott.
Butler, Fergus Almy.

Caines, Richard John Ridgway.
Carlson, Augusta Nordell.
Caro, Heiman.
Carpenter, Robert John.
Chandler, Charles Henderson.
Cheever, Austin Walter.

Chronquest, Alfred Peter.
Churchill, Frank Spooner.
Clapp, Roger Irving.
Clement, Samuel Anthony.
Cobleigh, Harry Robert Cushman.
Cohen, Joseph Powitzer.
Cohen, Milton Michael.
Coldicott, Francis Stephen.
Colwell, Howard Spencer.
Cowles, Dwight.
Cox, Oscar Francis, Jr.
Crabtree, Ernest Granville.
Cragin, Horace Stuart.
Crane, George Edward.
Crofton, George Henry.
Cullen, Charles Andrew.
Curran, John Francis.
Curry, William Joseph.

Davis, Henry Levi.
Dennie, Charles Clayton.
Devine, Harry Leo.
Dickerman, Charles.
Dillenback, Emil Uhlein.
Driscoll, Robert Ellsworth.
Drury, John Nelson.
Dynan, Nicholas Joseph.

Eaton, Henry Douglas.
Elkin, Samuel Nathaniel.
Eversole, George Edwin.

Fennessy, William Casey.
Fialko, Nathan.
Finkelstein, Isadore Albert.
Finnerty, Charles Albert.
Fram, Irving William.
Frankel, Herbert.

Garry, George.
Garry, John Joseph.
Gaylord, James Frederick.
Genzmer, George Victor.
Gilbert, Maurice Arthur.
Godvin, Bernard Aloysius.
Gooding, John Harold.
Gorman, William Edward.
Gould, Carlisle Royal.
Green, Hyman.
Green, William Arthur.
Greene, Harry Paul.
Gunter, Fred Clarke.

Hadley, Amos William.
Haines, George Arthur.
Haley, William Thomas.
Halpern, Harry.
Halton, Edward Peter.
Hammond, John Wilkes, Jr.
Hampartsoumian, Nishan Meguerditché.

Hanscom, Ridgely Fernald.
Harney, Robert Edwin.
Hart, Thomas Henry Evans.
Haskell, Cosa Dell.
Heyman, Philip.
Heywood, Nathaniel Jewett.
Hoey, John Joseph.
Holzer, William Francis.
Hornor, Albert Aurelius.
Hosmer, Merrill Fowler.
Howard, Herbert Handy.
Hull, Alson Joy.
Hull, Eugene Fellner.
Hunter, Floyd William.
Hynes, Fred Henry.

Jackson, Roy Chase.
Johnson, Arthur Edward.
Johnson, Herbert Lester Charles.
Jones, Frank Leslie.
Jones, Guy Walter Stanley.
Jones, Thomas Paul.
Jurist, Charles.

Kaplan, Murray Michael.
Keating, William Bernard.
Kelley, Edward Joseph.
Kemp, Lysander Schaffer.
Kiley, Daniel Joseph.
Killam, Franklin Harrison.
King, Elmer Henry.
Kinsley, William Gottlieb.
Kirkwood, Allan Stewart.
Klein, George.

Lane, Clayton Rogers.
La Riviere, Athanase de Charette
Evaresté.

Larrabee, Frank W.
Leavitt, Pierce Henry.
Le Clair, Hormidas Homer.
Lee, Edwin Delano.
Levine, Harry Benjamin.
Levine, Samuel Albert.
Louis, Lawrence Joseph.

McCabe, John Edward.
McCormick, William Aloysius.
McIntosh, Jennie Grace.
McLaughlin, Arthur Otis.
McLellan, William Edwin.
McMahon, William Thomas.
McNair, Hugh Robert.
MacGray, Charles Levene.
MacIntyre, William Angus.
MacKay, William Henry.
MacKnight, Richard Patton.
MacLean, Jean Augusta.
Margolis, Barney Joseph.
Mathewson, Frank Weeden.
Merrill, Everett Albert.
Meyers, Hyman Bernard.
Mikolaitis, Casimir John.
Millet, John Alfred Parsons.
Moor, Henry Britt.
Moriarty, Patrick Maurice.
Morrison, Lawrie Byron.
Mossman, George.
Murphy, Joseph William Patrick.
Musgrave, Harold Leighton.

Neves, Charles Serpa.
Nolan, William Joseph.

Oakley, Geraldine.
Ober, Frank Roberts.
O'Brien, Thomas Joseph.
O'Dea, Patrick Joseph.
O'Neil, James William.
O'Reilly, Francis Augustine.

Paglia, Jeremiah James.
Papas, Prodomos Nicholas.
Parris, Roland Oliver.
Pearlmutter, Samuel Henry.
Perkins, Roy Stanley.
Pierson, Philip Hale.
Plumb, Darley Garfield.
Prouty, Ira Humphrey.
Puskinigis, Frank Barthtomey.

Rapoport, Boris.
Record, Harold Roland.
Reed, Grace D.
Regan, Edward Francis.
Regan, William Francis.
Rochford, Richard Augustine.
Roderick, Charles Elvin.
Rodger, James Yeams.
Rogers, John Andrews.
Root, Raymond Richmond.
Rosen, William.

Salvin, Louis Wilton.
Savage, Lloyd Appleton.
Schott, Edward Henry.
Sewell, Clarence Wesley.
Shefferd, Jeannette Marie.
Silver, Louis.
Simmons, Edward Burnside.
Simmons, Ralph Hayward.
Simpson, William Hurd.
Smith, Edwin Eugene.

Smith, Ernest Elmer.
Smith, William Francis.
Smolczynski, Karol Mieczyslaw.
Stahl, William Martin.
Steele, George Louis.
Sternier, Burton Learn.
Stoll, Frank.
Sullivan, Elizabeth Ann.
Szmonski, John Joseph.

Tappan, Joseph Clarence.
Thompson, Clara Louise.
Thompson, Frank Adoniram.
Tiani, Bernardo.
Tobey, Harold Grant.
Togna, James.
Townsend, Gertrude Beatrice.
Trainor, Joseph Patrick.
Travis, John Henry.

Van Dolsen, William Walling.
Van Gaasbeek, George Henry.

Wainshel, Perez William.
Waldron, Frederick Rice.
Walker, George Theophilus.
Walker, Robert Irving.
Walker, Waldo Webster.
Webber, Wolfert Gerson.
Webster, Charles Edward Stewart.
Westlin, Richard Volmar.
Weston, Henry R.
Wheatley, Frank Edward.
Whitaker, Harper Elliott.
Williams, David Lawrence.
Wlazlo, Ladislaus Bogusz.
Woolf, Joseph Rubin.
Worcester, George Franklin.

Young, Edward Wallace.
Yudio, Hyman.

